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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 SEAN FINN,

11 Defendant.

Case No. 2:13-cr-0439-KJD-VCF

ORDER

12 Before the Court is Magistrate Judge Ferenbach's Report and Recommendation (ECF No.
13 514) that Defendant Sean Finn's Motion to Dismiss for Selective Prosecution (ECF No. 503) be
14 denied. Finn timely objected to the recommendation (ECF No. 516), and the United States
15 responded (ECF No. 520).

16 Finn is charged with conspiracy to commit wire fraud and securities fraud, five counts of
17 wire fraud, and four counts of securities fraud in connection to his alleged involvement in a
18 fraudulent investment scheme. Finn moved to dismiss the indictment against him, arguing that
19 the government chose to prosecute him on the basis of his sex. Finn claims that there are at least
20 three women, to whom he is similarly situated, that the government chose not to charge despite
21 their similar involvement in the fraud. The government counters that Finn has not showed that he
22 is similarly situated to those women. It also argues that there were male brokers involved in the
23 scheme who the government also elected not to charge. The Court has conducted a de novo
24 review of the record in this case under 28 U.S.C. § 636(b)(1) and LR IB 3-1 and finds that
25 Magistrate Judge Ferenbach's Report and Recommendation (ECF No. 514) is neither clearly
26 erroneous nor contrary to law. Accordingly, the Court holds that the Report and
27 Recommendation should be **ADOPTED** and **AFFIRMED**.

28 Finn has not provided clear evidence that prosecutors in this case were motivated by a


1 discriminatory purpose. Although prosecutors enjoy broad discretion in making charging
2 decisions, they cannot base those decisions on unjustifiable standards, such as race, religion, or
3 other “arbitrary classification[s].” Oyler v. Boles, 368 U.S. 448, 456 (1962). A claim of selective
4 prosecution requires two elements: evidence of a discriminatory effect and a discriminatory
5 purpose. United States v. Sellers, 906 F.3d 848, 852 (9th Cir. 2018). A selective prosecution
6 claim presents a high bar. Indeed, the presumption is that a prosecutor’s charging decisions
7 complied with equal protection guarantees. Reno v. Am.-Arab Anti-Discrimination Comm., 525
8 U.S. 471, 489 (1999). Only “clear evidence” to the contrary will overcome that presumption. Id.

9 Neither Finn’s motion to dismiss, nor his objections to the Report and Recommendation,
10 make such a showing. As Magistrate Judge Ferenbach pointed out, “[n]one of the evidence Finn
11 presented shows a discriminatory purpose based on Finn’s gender.” Rep. & Rec. 5, ECF No.
12 514. At worst, the fact that only men were charged may be evidence of a discriminatory effect of
13 the prosecution’s charging decisions. However, that is only half the battle. Finn lacks “clear
14 evidence” that a discriminatory *purpose* drove the prosecutor’s charging decisions here.
15 Additionally, the government’s decision not to charge other men who were involved in similar
16 work within this scheme is evidence that it did not act with a discriminatory purpose. Id.; Govt.
17 Resp. 4, ECF No. 520. Therefore, as Magistrate Judge Ferenbach found, Finn has not satisfied
18 both elements of a selective prosecution claim.

19 Accordingly, IT IS HEREBY ORDERED that the Magistrate Judge’s Report and
20 Recommendation (ECF No. 514) is **ADOPTED** and **AFFIRMED**.

21 IT IS FURTHER ORDERED that Defendant Sean Finn’s Motion to Dismiss for
22 Selective Prosecution is **DENIED**.

23 Dated this 8th day of January, 2020.

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26 _____
27 Kent J. Dawson
28 United States District Judge